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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09-488,686	01/20/2000	LOI NGUYEN	93-C-078C1 (1678-20)	4788

7590 05/02/2002

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EXAMINER

WILLIAMS, ALEXANDER O

ART UNIT	PAPER NUMBER
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2826

DATE MAILED: 05/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Examiner

Art Unit

Alexander O Williams

2826

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133)
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b)

**Status**

- 1) ☐ Responsive to communication(s) filed on 08 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1-25 is/are allowed.
- 6) ☐ Claim(s) 26-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner
- If approved, corrected drawings are required in reply to this Office action
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other \_\_\_\_\_

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Serial Number: 09/488686

Attorney's Docket #: 93-C-078C1-

RE(1620)

Filing Date: 1/20/00;

Applicant: Nguyen et al.

Examiner: Alexander Williams

Applicant's Response in Paper # 9, filed 10/1/01 has been acknowledged.

Applicant's Amendment in Paper # 10, filed 2/8/02 has been acknowledged.

The indicated allowability of claim 26, 28 to 32 and 34 are withdrawn in view of the newly discovered reference(s) to Applicant's Prior Art. Rejections based on the newly cited reference(s) follow.

Claims 1 - 25 are allowed.

Claims 26 to 34 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 26 and 27, "the second polysilicon layer" lack antecedent basis on line 2 of claim 27. Therefore, in claim 26, "a second conductive layer" should be claimed instead of the general "a second conductive layer."

In claim 31, it is unclear what is meant by "wherein the a second conductive layer."

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Any of claims 26 to 34 not specifically addressed above are rejected as being dependent on one or more of the claims which have been specifically objected to above.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Initially, it is noted that the 35 U.S.C. § 103 rejection based on a spin of glass layer, a insulating layer, and a plurality of spin of glass layers deals with an issue (i.e., the integration of multiple pieces into one piece or conversely, using multiple pieces in replacing a single piece) that has been previously decided by the courts.

In Howard v. Detroit Stove Works 150 U.S. 164 (1893), the Court held, "it involves no invention to cast in one piece an article which has formerly been cast in two pieces and put together...."

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In In re Larson 144 USPQ 347 (CCPA 1955), the term "integral" did not define over a multi-piece structure secured as a single unit. More importantly, the court went further and stated, "we are inclined to agree with the solicitor that the use of a one-piece construction instead of the [multi-piece] structure disclosed in Tuttle et al. would be merely a matter of obvious engineering choice" (bracketed material added). The court cited In re Fridolph for support.

In re Fridolph 135 USPQ 319 (CCPA 1962) deals with submitted affidavits relating to this issue. The underlying issue in In re Fridolph was related to the end result of making a multi-piece structure into a one-piece structure. Generally, favorable patentable weight was accorded if the one-piece structure yielded results not expected from the modification of the two-piece structure into a single piece structure.

Therefore, it would have been obvious to one of ordinary skill in the art to use a spin of glass layer and insulating layer as a plurality spin of glass layers as "merely a matter of obvious engineering choice" as set forth in the above case law.

Claims 26, 28 to 32 and 34, **insofar as they can be understood** are rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's Prior Art Figure 1.

Applicant's Prior Figure 1 show an integrated circuit SRAM cell formed in a semiconductor substrate **100**, a plurality of active transistor regions being formed in the substrate, the SRAM cell comprising: a first conductive layer **130** on the semiconductor substrate; a second conductive layer **230** disposed over the first conductive layer; a plurality of planarizing spin on glass layers **150** on the second conductive layer; an insulating layer **150** on a top one of the planarizing spin on glass layer; and a third conductive layer.

Therefore, it would have been obvious to one of ordinary skill in the art to use a spin of glass layer as a plurality spin

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of glass layers as "merely a matter of obvious engineering choice" as set forth in the above case law.

Claims 27 and 33 appear to contain allowable subject matter and may be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112 and to include all of the limitations of the base claim and any intervening claims. Any such indication as to the allowability of these claims is reserved until which time a suitable response is filed.

## Response

Applicant's arguments filed 2/8/02 have been fully considered, but are moot in view of the new grounds of rejections detailed above.

Field of Search	Date
U.S. Class and subclass: 257/754,760,640,904,752,903,350,380-382,755- 758,908,905,384,760,640	4/30/02
Other Documentation: foreign patents and literature in 257/754,760,640,904,752,903,350,380-382,755- 758,908,905,384,760,640	4/30/02
Electronic data base(s): U.S. Patents EAST	4/30/02

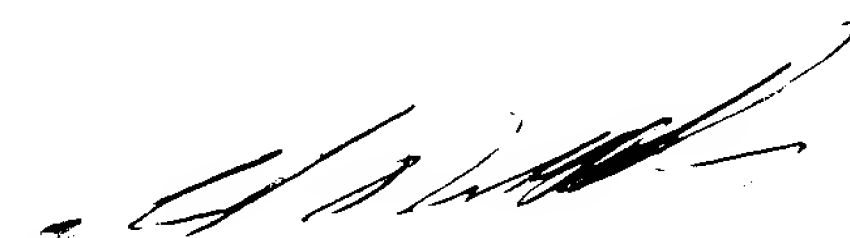
***Papers related to this application may be submitted to Technology Center 2800 by facsimile transmission. Papers should be faxed to Technology Center 2800 via the Technology Center 2800 Fax center located in Crystal Plaza 4-5B15. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Technology Center 2800 Fax Center number is (703) 308-7722 or 24. Only Papers related to Technology Center 2800 APPLICATIONS SHOULD BE FAXED to the GROUP 2800 FAX CENTER.***

Any inquiry concerning this communication or any earlier communication from the examiner should be directed to **Examiner Alexander Williams** whose telephone number is **(703) 308-4863**.

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Any inquiry of a general nature or relating to the status of this application should be directed to the **Technology Center 2800 receptionist** whose telephone number is **(703) 308-0956**.

4/30/02



Primary Examiner  
Alexander O. Williams